



STATE OF NEW JERSEY  
Board of Public Utilities  
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Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION	)	ORDER
OF FUSION TELECOMMUNICATIONS	)	
INTERNATIONAL, INC., NBS ACQUISITION CORP.,	)	
AND NETWORK BILLING SYSTEMS, LLC FOR	)	
APPROVAL (1) FOR THE TRANSFER OF CONTROL	)	
OF NETWORK BILLING SYSTEMS, LLC AND (2) FOR	)	
NETWORK BILLING SYSTEMS, LLC TO	)	
PARTICIPATE IN NEW FINANCING ARRANGEMENTS	)	
OF FUSION TELECOMMUNICATIONS	)	
INTERNATIONAL, INC.	)	DOCKET NO. TM12060511

Parties of Record:

**James H. Laskey, Esq.**, Norris McLaughlin & Marcus, P.A., on behalf of Petitioners  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD<sup>1</sup>:

On June 11, 2012, Fusion Telecommunications International, Inc. ("Fusion"), NBS Acquisition Corp. ("Newco") and Network Billing Systems, LLC ("NBS") (collectively, the "Petitioners"), by their counsel and pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7 and N.J.S.A. 48:3-9 filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority from the Board to (1) to complete the transfer of direct control of NBS to Newco and indirect control of NBS to Fusion and (2) for NBS to participate in new financing arrangements of Fusion (collectively, the "Transactions"). Following the transfer, NBS will continue to offer services at the same terms, rates and conditions on which it currently offers such services in the state.

<sup>1</sup> Commissioner Joseph L. Fiordaliso did not participate.

## **BACKGROUND**

Fusion is a publicly-held Delaware corporation with principal offices located in New York, New York. Newco is a corporation to be formed under the laws of the State of Delaware as a wholly-owned direct subsidiary of Fusion. The petition notes that although Fusion is a publicly-held company, Fusion has two shareholders that hold more than 10% of Fusion's equity: Marvin S. Rosen, the Chairman of Fusion (approximately 15%) and West End Special Opportunity Fund, II, LP (approximately 12%). Fusion is a provider of Internet Protocol ("IP") based digital voice and data communications services to corporations and carriers worldwide. Fusion's services include local, long distance and international Voice Over Internet Protocol ("VOIP") services and other enhanced communications services and features. Currently, Fusion does not hold authorization to provide intrastate telecommunications services in any state, but is authorized by the Federal Communications Commission ("FCC") to provide interstate and international telecommunications services.

NBS is a New Jersey limited liability Company with principal offices located in Wayne, New Jersey. NBS is owned by Jonathon Kaufman (15%) its founder and Chief Executive Officer, and the LK Trust (85%), which is managed by Mr. Kaufman. NBS is a provider of local exchange services such as direct inward and outward dialing, 911 and E911, directory listing and assistance, Operator Assistance and interexchange services such as Dial access, 1-800 toll free number, calling card and switched and non-switched local services including private line services. In New Jersey, NBS is authorized to provide local exchange and interexchange telecommunications services. See Order, In the Matter of the Petition of Network Billing Systems, LLC for Approval to Provide Local Exchange, Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE08070466, dated September 15, 2008. Additional information and qualifications of NBS can be found in that Order. In New Jersey, NBS currently has 850 customers and 50 employees.

## **DISCUSSION**

According to the petition, pursuant to a Membership Interest Purchase Sale Agreement by and among Fusion, Newco, NBS, Jonathan Kaufman and Christiana Trust as trustee of LK Trust (the "Agreement"), Newco will acquire all of the outstanding equity interests in NBS (the "NBS Acquisition"). As a result, NBS, will become a wholly owned direct subsidiary of Newco and a wholly owned indirect subsidiary of Fusion. Petitioners state that the current customers of NBS will remain customers of NBS following the NBS Acquisition. Accordingly, NBS will continue to operate pursuant to its existing authorizations and customers will continue to receive their existing services at the same rates, terms and conditions that they have prior to the Transactions and, therefore, the Transactions will be seamless and transparent to customers. The only immediate change resulting from the NBS Acquisition will be that NBS will be owned by Newco and ultimately Fusion.

The Petitioners are also requesting Board approval under N.J.S.A. 48:3-7 and N.J.S.A. 48:3-9, for NBS to participate in new financing arrangements of Fusion. Newco plans to enter into up to \$17 million in new indebtedness (the "New Financing") to fund a portion of the NBS acquisition.

Petitioners seek approval for NBS to participate in financing arrangements discussed below.

In order to maintain flexibility, Petitioners seek approval for NBS to participate in Fusion's new financing arrangements in the form of notes or debentures including notes convertible into equity and private notes that may be exchanged for public notes; conventional credit facilities, such as revolving credit facilities and term loans; letters of credit; and bridge loans or a combination thereof.

The New Financing will consist solely of long-term indebtedness with a maturity of up to 8 years after issuance depending on the type of facility. The interest rate will be the market rate for similar financings and will not be determined until the financing is finalized. Fusion currently expects the New Financings to accrue interest at a fixed rate of 10% and 11.5%. In order to maintain flexibility, however, Petitioners seek approval for NBS to participate in Fusion's new financing arrangements that, depending on the type of debt securities, facilities or other arrangements, accrue interest at rate(s) that may be fixed or floating (a rate index such as LIBOR (London Interbank Offered Rate) or Federal Funds Rate, plus an applicable margin), or a combination of fixed rates and floating rates.

The New Financing will be secured with a first lien on all of the assets of Newco and NBS and a second lien on all of the assets of Fusion. The equity of Fusion's subsidiaries may also be pledged as additional security. Additionally, Fusion and its subsidiaries will provide a guaranty as security for the New Financing. Petitioners also seek approval for NBS, upon completion of the NBS Acquisition, to provide a security interest in its assets and for NBS to provide a guaranty in support for the New Financing.

As stated above, the New Financing may be used primarily to fund the NBS Acquisition and pay the fees and expenses associated with the Transactions. A portion of the proceeds from the New Financing may also be used for working capital requirements and general corporate purposes of the combined company. To the extent necessary and upon consummation of the NBS Acquisition, Petitioners request approval for NBS to provide a guaranty and related pledge of its assets as security for the New Financings.

In evaluating this petition, the Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1; N.J.A.C. 14:1-5.14(c). Also, under N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board is required to determine whether the public utility or a wholly owned subsidiary thereof may be unable to fulfill its pension obligations to any of its employees. Petitioners note that Fusion expects to retain most if not all of NBS management and employees, and that neither NBS or Fusion has an employee pension plan, although their employees have other retirement benefits to the extent the employees elect to participate in such retirement benefits, those employees will retain their existing rights in those retirement benefits upon completion of the Transactions.

The Petitioners assert that the Transactions described herein will serve the public interest by enabling Fusion and NBS to offer customers an alternative to legacy carriers through a comprehensive suite of IP-based and circuit communications services. Fusion expects that the combination of Fusion and NBS will create opportunities for existing and potential customers of both companies to receive a broader base of services.

The Board's review indicates that the financing transactions and the use of the proceeds associated therewith are appropriate. While there is no guarantee in this regard, especially given the competitive environment in which Petitioners operate, the Board is satisfied that the transactions will not have an adverse impact on Petitioners' operations in New Jersey.

The Division of Rate Counsel has reviewed this matter and, by letter dated July 3, 2012, states that it does not object to the approval of this Petition.

### **FINDINGS AND CONCLUSIONS**

After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on rates or service quality since NBS's New Jersey customers will continue to receive the same services from the same entity at the same rates and under the same terms and conditions. Also, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioners as the transaction will strengthen NBS's competitive posture in the telecommunications market due to its access to additional resources. In addition, the Board is persuaded that Petitioners will make every effort to minimize any potential adverse impact to employees in New Jersey.

Accordingly, the Board FINDS that the proposed Transactions will have no material impact on the rates of current customers, or on employees. The Board also FINDS that the Transactions will have no negative impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board FINDS that the proposed Transactions are in accordance with the law and in the public interest, and HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transaction within 7 days of the consummation of the transfer.

The Board FINDS that the proposed Transactions are consistent with the applicable law and the public interest. The Board therefore, approves the purposes thereof. The Board HEREBY AUTHORIZES NBS to provide its guarantee and related pledge of its assets as security in connection with the New Financing.

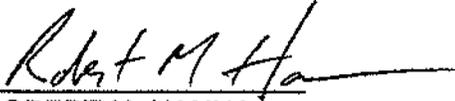
This Order is subject to the following provisions.

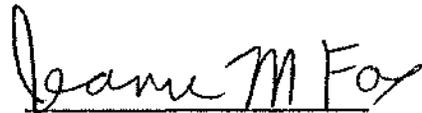
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
2. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
3. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by Petitioners.

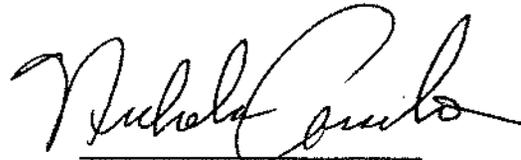
4. Petitioner shall notify the Board, within five (5) business days, of any material changes in the financing arrangements and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.

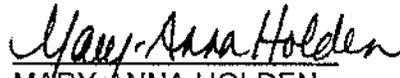
DATED: 7/18/12

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



I/M/O VERIFIED JOINT PETITION OF FUSION TELECOMMUNICATIONS INTERNATIONAL, INC., NBS ACQUISITION CORP., AND NETWORK BILLING SYSTEMS, LLC FOR APPROVAL (1) FOR THE TRANSFER OF CONTROL OF NETWORK BILLING SYSTEMS, LLC AND (2) FOR NETWORK BILLING SYSTEMS, LLC TO PARTICIPATE IN NEW FINANCING ARRANGEMENTS OF FUSION TELECOMMUNICATIONS INTERNATIONAL, INC.

DOCKET NO. TM12060511

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